



**Fifth Meeting**  
**September 14 & 15, 2005**

**LCR 1 & 2**  
**State Capitol Building**  
**Pierre, South Dakota**

The fifth meeting of the Constitutional Revision Commission was called to order by Chair Robert A. Miller at 1:05 p.m. (CT), September 14, 2005, in LCR 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Mr. James Abbott, Mr. Mark Barnett, Vice Chair Robert Burns, Vice Chair Donald Dahlin, Lieutenant Governor Dennis Daugaard, Mr. Robert Drake, Mr. Gene Lebrun, Ms. Mary McClure Bibby, Chair Robert A. Miller, Mr. Ronald Olinger, Mr. Robert Roe, Mr. Brent Wilbur, and Supreme Court Justice Steven Zinter. Mr. Jim Hutmacher was excused on September 14, 2005, and in attendance on September 15, 2005. Mr. Steve Cutler, Dr. Sean Flynn, and Mr. Larry Lucas were excused.

Staff members present included David L. Ortbahn, Principal Research Analyst; Reed Holwegner, Chief Fiscal Analyst; and Teri Retrum, Senior Legislative Secretary.

**(NOTE:** For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

### **Wednesday, September 14, 2005**

The following subcommittees met on the morning of September 14, 2005.

- Subcommittee on Legislative Conflicts of Interest—Dr. Donald Dahlin, Chair, Mr. Mark Barnett, Mr. Gene Lebrun, and Mr. Robert Roe.
- Subcommittee on Legislative Reapportionment—Ms. Mary McClure Bibby, Chair, Dr. Robert Burns, Dr. Donald Dahlin, and Mr. Ronald Olinger.

### **Approval of Minutes**

**Mr. David Ortbahn**, LRC, noted the following correction to the minutes of the April 20 and 21, 2005, meeting and said that the original minutes for the April meeting will be corrected to reflect that correction for the permanent record:

*On page 8, Mr. Brent Wilbur (not Mr. Mark Barnett) was appointed Chair of the subcommittee to discuss § 26—Municipal powers denied to private organizations—and report to the commission at its next meeting (September 14 and 15, 2005).*

**DR. DAHLIN MOVED, SECONDED BY MS. MC CLURE, THAT THE MINUTES OF THE DECEMBER 16, 2005, MEETING, BE APPROVED AS CORRECTED. The motion prevailed unanimously on a voice vote.**

### **Review of Possible Changes to Certain Obsolete Constitutional Provisions**

Mr. Ortbahn discussed the draft Joint Resolution to revise certain obsolete constitutional provisions regarding the Legislature (**Document #1**). He said that the draft resolution reflects the changes to the sections of Article III that could be considered obsolete or antiquated that the commission made at its April 20 and 21, 2005, meeting.

#### § 2 – Number of Legislators – Regular sessions proposed

Mr. Ortbahn said that § 2 does not propose any changes since the April meeting.

#### § 3 – Qualifications for legislative office – Officers ineligible

**Dr. Robert Burns** commented that, if the commission wants the qualifications for legislative office to be more generic in paragraph number three, it could be stated that no person holding public office shall hold legislative office.

**Mr. Gene Lebrun** said that would preclude any legislator from holding another public office. He suggested that the commission discuss this issue when discussion begins on the conflicts of interest issue.

**Dr. Donald Dahlin** said that it is not clear to him what the writers of the South Dakota Constitution wanted to accomplish by the provisions in the third paragraph.

Mr. Lebrun commented that the provisions are antiquated.

**Mr. Brent Wilbur** said that the qualifications for legislative office should be narrowly defined and that the commission should work toward making it easier for more people to run for the Legislature.

**Mr. Ronald Olinger** said that it was his recollection that the third paragraph came from the Illinois Constitution. In his opinion, Mr. Olinger said that the section should be redrawn but not eliminated. He thinks it should be cleaned-up.

**MR. LEBRUN MOVED, SECONDED BY MR. OLINGER, THAT THE COMMISSION CONTINUE TO DISCUSS QUALIFICATIONS FOR LEGISLATIVE OFFICE CONTAINED IN PARAGRAPH THREE WHEN IT DISCUSSES THE CONFLICTS OF INTEREST ISSUE. The motion prevailed on a voice vote.**

**Justice Steven Zinter** commented that he is having second thoughts about changing the term, elector, to voter. Justice Zinter said that he is concerned that it could mean that a person who has not voted could not run for the Legislature. Justice Zinter said that perhaps it should be left as is.

**DR. DAHLIN MOVED, SECONDED BY MR. LEBRUN, THAT THE FIRST LINE IN § 3 BE REWORDED TO SAY "WHO IS ELIGIBLE TO VOTE IN THE DISTRICT FROM WHICH SUCH PERSON IS CHOSEN".**

**MR. OLINGER MADE A SUBSTITUTE MOTION, SECONDED BY MS. MARY MC CLURE BIBBY, THAT THE TERM "ELECTOR" SHOULD BE USED INSTEAD OF THE TERM "VOTER" IN THE FIRST SENTENCE OF § 3. The substitute motion prevailed on a voice vote.**

§ 4. Disqualification for conviction of crime – Default on public money

The commission agreed to accept § 4 as drafted.

§ 6. Legislative terms of office – Compensation – Regular sessions

**MR. OLINGER MOVED, SECONDED BY DR. BURNS, THAT THE DRAFT JOINT RESOLUTION BE AMENDED AS FOLLOWS:**

**ON PAGE 3, LINE 14, AFTER "EXPENSES," INSERT "PER DIEM,".**

**The motion prevailed on a voice vote.**

§ 8. Oath required of legislators and officers – Forfeiture of office for false swearing

The commission agreed to accept § 8 as drafted.

§ 11. Legislator privilege from arrest – Freedom of debate

Responding to the commission's request that staff develop some options regarding § 11, Mr. Ortbahn distributed copies of similar provisions to Article III, Section 11, found in surrounding states (**Document #2**).

After brief commission discussion, **MS. MC CLURE BIBBY MOVED, SECONDED BY LIEUTENANT DAUGAARD, THAT THE OVERSTRIKES IN § 11 OF THE DRAFT BE REMOVED AND THAT THE UNDERSCORED MATERIAL BE DELETED. The motion prevailed on a voice vote.**

§ 23. Private and special laws prohibited

At the commission's direction, Mr. Ortbahn said that the laundry list of private or special laws that the Legislature is prohibited from enacting has been overstricken in the draft.

The commission agreed to accept § 23 as drafted.

§ 24. Release of debt to state or municipality

Lieutenant Governor Dugaard said that § 24 could be considered to deal with substantive changes rather than clean-up changes and suggested that the commission might want to review this section when it discusses those types of changes.

Mr. Wilbur expressed agreement with Lieutenant Governor Dugaard that repealing § 24 could be interpreted as a substantive change to the Constitution.

**LIEUTENANT GOVERNOR DAUGAARD MOVED, SECONDED BY MR. WILBUR, THAT THIS PROPOSED REPEAL NOT BE CONTAINED IN THE SAME RESOLUTION AS THE OTHER CLEAN-UP PROVISIONS BUT IN A SEPARATE RESOLUTION. The motion prevailed on a voice vote**

§ 26. Municipal powers denied to private organizations

Mr. Ortbahn said that this section is commonly referred to as the "ripper clause" and is meant to shield local governments from the Legislature.

Mr. Wilbur, Chair of the Subcommittee appointed to take a look at § 26, reported on some research he had done regarding the history of this section. He indicated eight state constitutions had similar provisions. Mr. Wilbur handed out a copy of the case—*Specht v. City of Sioux Falls* (**Document #3**). He felt this case had the best discussion of the ripper clause. Based on this case, he could see why this section exists and should be retained.

**MR. WILBUR MOVED, SECONDED BY MR. BARNETT, THAT § 26 NOT BE REPEALED AND REMOVED FROM THE CLEAN-UP RESOLUTION. The motion prevailed on a voice vote.**

Mr. Olinger said that he supports the "ripper clause" and that perhaps the Constitution should include counties in its denial of powers to private organizations.

Mr. Wilbur and Mr. Lebrun agreed that counties probably should be included.

Justice Zinter said that the argument could be made that the language merely is archaic.

Mr. Lebrun agreed that the language is archaic but that the section should not be repealed.

**Mr. James Abbott** said that there must be some reason why the word, municipality, was used and not county or school districts and expressed his opinion that the section should be left as is.

Mr. Barnett agreed with Mr. Abbott and said that the commission might not want to include counties without knowing why they were eliminated in the first place.

**MR. OLINGER MOVED, SECONDED BY MR. LEBRUN, THAT THE COMMISSION DIRECT STAFF TO RESEARCH WHY COUNTIES WERE NOT INCLUDED IN § 26 AND PROVIDE THAT INFORMATION TO THE COMMISSION. The motion prevailed on a voice vote.**

§32. Term limitations for United States congressmen

The commission agreed that this section should be repealed.

Action on draft Joint Resolution to revise certain obsolete constitutional provisions regarding the Legislature as amended.

**DR. BURNS MOVED, SECONDED BY DR. DAHLIN, THAT THE COMMISSION ADOPT THE DRAFT RESOLUTION AS AMENDED. The motion prevailed on a voice vote.**

The commission recessed at 2:25 p.m. and reconvened at 2:35 p.m.

**Review of Possible Changes to the Constitution Regarding Legislative Process**

Mr. Ortbahn discussed the revised constitutional sections regarding the legislative process (**Document #4**). He said that the revised sections reflect the changes to the sections that the commission made at its April 20 and 21, 2005, meeting.

§ 13. Legislative journals – Recording of yeas and nays

The commission agreed to accept § 13 as drafted.

§ 14. Elections viva voce

The commission agreed to accept § 14 as drafted.

§ 15. Open legislative sessions – Exception

Mr. Ortbahn explained that, at the request of the commission, he drafted three options for the commission's consideration. He said that surrounding states have similar provisions in their constitutions.

**MR. LEBRUN MOVED, SECONDED BY MR. ABBOTT, THAT THE COMMISSION ADOPT THE LANGUAGE OF NORTH DAKOTA, WHICH READS:**

**"ALL SESSIONS OF THE LEGISLATIVE ASSEMBLY, INCLUDING THE COMMITTEE OF THE WHOLE AND MEETINGS OF LEGISLATIVE COMMITTEES, MUST BE OPEN AND PUBLIC."**

**AND ADD TO THAT LANGUAGE**

**"NO VOTES MAY BE TAKEN AT ANY SESSION OR MEETING THAT IS CLOSED TO THE PUBLIC."**

Lieutenant Governor Dugaard asked whether this would apply to the Executive Board when dealing with personnel and legal matters.

**MR. OLINGER MADE A SUBSTITUTE MOTION, SECONDED BY MR. DRAKE, TO RETAIN CURRENT LANGUAGE BUT ADD THAT THE SECTION APPLIES TO COMMITTEES OF THE LEGISLATURE AND ALSO ADD THAT "NO VOTES MAY BE TAKEN AT ANY SESSION OR MEETING THAT IS CLOSED TO THE PUBLIC." The substitute motion failed on a voice vote.**

**MR. DAHLIN MADE A SUBSTITUTE MOTION, SECONDED BY MS. MC CLURE BIBBY, TO ADOPT OPTION B; HOWEVER, DELETE "IT" AND INSERT "THE BUSINESS IS SUCH AS".**

Mr. Abbott said that he thinks that perhaps the public does not think that anything should be kept secret, and this may be viewed by the public as leading to less openness.

Dr. Burns commented that probably the same rules that apply to closed meetings in the executive branch also apply to the legislative branch.

**The motion prevailed on a voice vote.**

#### § 17. Reading of bills

The commission agreed to accept § 17 as drafted.

#### § 19. Signing of bills and resolutions

Stating that all resolutions are signed, **MR. LEBRUN MOVED, SECONDED BY MR. WILBUR, THAT "JOINT" BE STRICKEN. The motion prevailed on a voice vote.**

**MS. MC CLURE BIBBY MOVED, SECONDED BY MR. LEBRUN,, THAT THE COMMISSION ADOPT THE REVISED SECTIONS REGARDING THE LEGISLATIVE PROCESS AS CHANGED. The motion prevailed on a voice vote.**

### **Review of Powers Typically Found in the Legislative Article Located in Other Parts of the South Dakota Constitution**

Mr. Ortbahn said that impeachment powers, confirmation powers, power to ask for advisory opinions of the Supreme Court, are powers found in legislative articles of other states but are in other parts of the South Dakota Constitution. Mr. Ortbahn said that the commission's study does not include going outside the legislative article.

Mr. Lebrun expressed his opinion that, even if those issues are located in other parts of the Constitution, the commission should discuss them in relation to its discussion of the legislative article.

Mr. Drake said that he disagrees and that the Legislature established the commission to review Legislative Article III.

**Chair Miller asked for a show of hands concerning whether the commission should address the sections of the Constitution dealing with impeachment powers, which are outside the legislative article. On a show of hands, Chair Miller declared that the commission would not address impeachment powers.**

**Chair Miller asked for a show of hands concerning whether the commission should address the section dealing with confirmation powers, which is outside the legislative article. On a show of hands, Chair Miller declared that the commission would not address confirmation powers.**

Mr. Ortbahn indicated that seven states authorize the legislative or executive branches to request an advisory opinion. The South Dakota Constitution authorizes the Governor to request an advisory opinion of the Supreme Court. That authority is found in Article V, Section 5.

Regarding advisory opinions, Mr. Olinger said that he does not believe discussion of that issue would be going outside the Legislative Article since that authority could be placed in Article III.

Justice Zinter commented that this issue is different from the discussion of impeachment powers and confirmation powers since it deals solely with the powers of the Legislature and, consequently, could be considered by the commission.

**Chair Miller asked for a show of hands concerning whether the commission should address the authority of the Legislature to request advisory opinions of the Supreme Court. On a show of hands, Chair Miller declared that the commission would address advisory opinions.**

Chair Miller asked whether the commission should give the Supreme Court an opportunity to react to this idea.

The commission agreed not to.

Mr. Lebrun said that perhaps the commission should consider the matter at another meeting.

Mr. Wilbur felt that giving the Supreme Court the power to issue advisory opinions at the request of the Legislature would politicize the Court, and thus is not a good idea.

**MR. WILBUR MOVED, SECONDED BY MR. OLINGER, THAT THE COMMISSION NOT FURTHER DISCUSS THE CONCEPT OF ADVISORY OPINIONS IN ARTICLE III. The motion prevailed on a voice vote.**

Mr. Ortbahn distributed copies of Joint Rule 1-11 from the Rules of the South Dakota Legislature, which deals with discipline of a disorderly member (**Document #5**). He said that most states have some provision dealing with this matter in their constitution. The 1974

Constitution Revision Commission recommended language being added to Article III regarding the expulsion of members.

Mr. Lebrun said that he opposes doing anything with South Dakota's provisions, especially since legislators still are held to two-year terms at a time. He said that this has not been a problem in South Dakota.

Mr. Barnett interjected that there would be confusion over the definition of "expel"—does it mean expelled from the floor for a day or expulsion forever, etc.

**Mr. Reuben Bezpaletz**, Chief of Research and Legal Services, LRC, said that "expel" means that a legislator is expelled from the Legislature.

There was some discussion that the rule may not have any basis constitutionally.

Chair Miller commented that the impeachment procedures contained in Article XVI should be able to address any problems that come up.

**MR. BARNETT MOVED, SECONDED BY MR. OLINGER, NOT TO INCLUDE DISCUSSION OF DISCIPLINE OF A DISORDERLY MEMBER IN THE COMMISSION'S DELIBERATIONS. The motion prevailed on a voice vote.**

### **Review of Remaining Sections of the Legislative Article**

Mr. Ortbahn distributed copies of "Initiative, Referendum and Recall (**Document #6**) and "Signature Requirements" (**Document #7**) from the National Conference of State Legislatures (NCSL).

Mr. Ortbahn discussed the remaining sections of the Legislative Article (**Document #8**).

#### § 1. Legislative power—Initiative and referendum

Mr. Olinger commented that in this day and age, with increases in technology, it is too easy to get issues on the ballot. He said that if we do not make a change, we will become like California with a large number of issues on each ballot.

**MS. MC CLURE BIBBY MOVED, SECONDED BY MR. OLINGER, THAT THE PERCENTAGE OF THE QUALIFIED ELECTORS OF THE STATE THAT SHALL BE REQUIRED TO INVOKE EITHER THE INITIATIVE OR THE REFERENDUM BE INCREASED FROM FIVE PERCENT TO TEN PERCENT.**

Mr. Barnett said that South Dakota was the first state to adopt the initiative process and does not support raising it to ten percent. He said that it is a closely held way for the citizens of the state to tell the Legislature that they do not approve of what the Legislature is doing on a certain matter.

Mr. Wilbur said that he disagrees with Mr. Barnett and that this issue should be kept separate from the clean-up part of the commission's proposal.



**THE MOTION MADE BY MS. MC CLURE BIBBY, SECONDED BY MR. OLINGER, PREVAILED ON A VOICE VOTE.**

Dr. Dahlin commented that in the future the commission may want to look at some geographic requirements when it comes to the collection of signatures so there is statewide support and not just support from Minnehaha and Pennington Counties.

§ 7. Convening of annual sessions

Dr. Dahlin questioned if the current language of the constitution allowed the Legislature to recess for say three months and then come back into session.

Justice Zinter commented that it was his opinion that, as long as the Legislature did not exceed the number of days authorized by the Constitution, the Legislature could recess as many times as it wants. Several members concurred.

**MR. BARNETT MOVED, SECONDED BY MR. OLINGER, THAT THE COMMISSION ACCEPT § 7 AS IS. The motion prevailed on a voice vote.**

§ 9. Each house as judge of qualifications—Quorum—Rules of proceedings—Officers and employees

**MR. DRAKE MOVED, SECONDED BY MS. MC CLURE BIBBY, THAT THE COMMISSION LEAVE § 9 AS IS. The motion prevailed on a voice vote.**

§ 25. Games of chance prohibited—Exceptions

Regarding the city of Deadwood, South Dakota, commission members discussed whether the entire net municipal proceeds of the card games and slot machines in Deadwood should continue to be devoted to the historic restoration and preservation of Deadwood since most of that type of work has been completed. The commission discussed the possibility of modifying the last sentence of the section so these monies could be used for other purposes.

Mr. Olinger commented that this money may be already committed for payment of bonds.

**MR. LEBRUN MOVED, SECONDED BY MR. BARNETT, THAT THE COMMISSION CONSULT WITH THE GOVERNMENT OF DEADWOOD REGARDING WHETHER THE ENTIRE NET MUNICIPAL PROCEEDS OF THE CARD GAMES SHOULD CONTINUE TO BE DEVOTED TO THE HISTORIC RESTORATION AND PRESERVATION OF DEADWOOD, The motion prevailed on a voice vote.**

Mr. Wilbur suggested that a three-member subcommittee be appointed to discuss the manner by which the commission will solicit input from Deadwood officials.

Chair Miller appointed Mr. Lebrun to be the Chair of such subcommittee with Mr. Olinger and Mr. Drake serving as members of the subcommittee.

§ 27. Suits against the state

The commission agreed to leave § 27 as is.

§ 28. Bribery and corrupt solicitation of officers—Compelling testimony—Immunity from prosecution

Dr. Dahlin questioned when this section is needed.

Mr. Lebrun commented that proposing to repeal this section might not be viewed favorably by the public.

The commission agreed to leave § 28 as is.

§ 29. Legislative powers in emergency from enemy attack

Mr. Ortbahn commented that not all states' constitutions include this provision. He said that this was included at the height of the Cold War.

Mr. Lebrun questioned whether any other states have considered a similar provision for natural disasters.

Chair Miller directed staff to research whether any other states have considered a similar provision for natural disasters and for the commission to discuss this section again at its next meeting.

§ 30. Power of committee of Legislature to suspend administrative rules and regulations

The commission agreed to leave § 30 as is.

§ 31. Convening of special sessions upon petition

The commission agreed to accept § 31 as is.

Dr. Dahlin questioned whether the Legislature had the power of subpoena.

Mr. Bezpaletz commented that the Legislature had the authority by statute and that it had only come up three times in the last thirty-five years

There was commission discussion about whether some language should be placed in the Constitution regarding the authority of the Legislature to issue subpoenas or whether it was an inherent power of the Legislature.

Ms. McClure Bibby commented that it might not be a good idea to propose constitutional language regarding subpoenas for, if the proposed change would fail, it would give persons ammunition to question the authority of the Legislature to subpoena.

The commission decided not to do anything further regarding subpoenas.

Mr. Roe asked how "legislative day" is defined.

Mr. Bezpaletz said that he would provide that information.

The commission recessed at 4:30 p.m. and reconvened at 8:05 a.m. on September 15, 2005.

## **Thursday, September 15, 2005**

### **Appropriations Process—South Dakota Versus Other States**

**Mr. Reed Holwegner**, Chief Fiscal Analyst, LRC, distributed copies of "Legislative Budget Procedures A Guide to Appropriations and Budget Processes in the States, Commonwealths, and Territories" (**Document #9**) and "Governing for Results: State Performance Reporting and Budgeting—Accountability in the States" from NCSL (**Document #10**).

In discussing the document, Mr. Holwegner stated that all legislatures appropriate money using a variety of methods.. He listed the following questions of which to be mindful when considering the appropriation of money:

1. Where does the money come from?
2. Where does the money go?
3. How much money goes there?
4. Why does the money go there?
5. How much money is available to be spent?

Mr. Holwegner highlighted the following in discussing South Dakota's budgetary process versus other states:

- Development of the recommended budget;
- Where major appropriations bill(s) are introduced in the Legislature;
- Structure and size of Appropriations Standing Committees;
- Non-Appropriations bills with a fiscal impact;
- Minimum time that the Legislature must review the budget before voting;
- Vote required to pass the budget;
- Post-enactment budget revisions and supplemental appropriations;
- Executive authority to cut the enacted budget;
- Legislative role in cutting the enacted budget;
- Power of the Executive Branch and role of the Legislature to transfer appropriations;

- Procedures for supplemental appropriations when the Legislature is not in session;
- Programs, purposes, and activities for which the Legislature can make open-ended appropriations.

Mr. Holwegner classified the state's budgeting and appropriations processes as being similar to most other states. It is incremental in nature. The budget for an outlaying year is based upon the current year's budget with enhancements and reductions applied to it. Money is appropriated annually at the program division level rather than by line item. The appropriations committees, as a matter of custom, use the budget recommended by a governor as the basis for their deliberations. While the South Dakota Legislature uses a joint appropriations committee for testimony and deliberations, most other legislatures do not. Separate committee hearings recognize the utility of a bicameral legislature. Mr. Holwegner observed that since senators appointed to the appropriations committee serve on no other, the remaining twenty-six senators have a slightly heavier committee assignment.

Mr. Holwegner said there are many ways to articulate legislative intent such as through legislation, journal entries, or committee reports. However, in South Dakota, intent is articulated primarily through letters approved by the Special Committee on Appropriations and signed by the co-chairs. He noted that this communication is only the intent of the committee and not of the entire Legislature because it did not vote upon the letters. Since letters of intent are not referenced in either the Constitution or statute, they do not have the force of law.

**MR. OLINGER MOVED, SECONDED BY MS. MC CLURE BIBBY, THAT THE COMMISSION DIRECT STAFF TO DRAFT A PROVISIONAL PAPER REGARDING AMENDMENTS TO ARTICLE III REGARDING THE APPROPRIATION PROCESS. The motion prevailed on a voice vote.**

### **Reports of Subcommittees**

Subcommittee on Conflicts of Interest—Dr. Dahlin, Chair; Mr. Barnett, Mr. Lebrun, and Mr. Roe

Dr. Dahlin stated that the subcommittee met yesterday and decided to do three things.

First, the subcommittee agreed to three changes to section 12. One would shorten from one year to six months the time period after a legislator has completed her or his service for which a legislator is prohibited from participating in a state contract. The second would remove the prohibition on legislators participating in county contracts. The third would allow legislators to serve on boards and commissions.

Mr. Ortbahn and Mr. Barnett will draft an amendment for further consideration in November which would embody these agreed upon items.

Second, the subcommittee will take a look at language which would allow legislators to have a state contract if the contract was let by a competitive sealed bidding process. Also, the subcommittee will look at language which would state that if a legislator is at no more of an

advantage than a member of the general public, a conflict would not exist in having a state contract.

Third, Dr. Dahlin said that a lot of states are not as stringent in their statutory and constitutional provisions regarding the participation of legislators in state contracts and that he is unaware of any problems in those states. He stated that Mr. Barnett has agreed to check with attorney generals in surrounding states to see whether they have experienced any problems.

Mr. Lebrun asked that the documents that Dr. Dahlin requested be given to subcommittee members also be distributed to all members of the commission because they provided excellent information **(Document #11)**.

Chair Miller directed commission members to provide the subcommittee with suggestions by November 1. The suggestions can be routed through staff for distribution.

For informational purposes, Mr. Barnett distributed copies of "A discussion of Article III, Section 12, of the South Dakota Constitution **(Document #12)**."

Subcommittee on Legislative Reapportionment—Ms. Mary McClure Bibby, Chair; Dr. Burns, Dr. Dahlin, and Mr. Olinger

Ms. McClure Bibby reported that the subcommittee reviewed the recent court activities in this area and the subcommittee agreed that, based on these court decisions, there is not a problem at this time with the constitutional provision that requires the Legislature to reapportion itself after each census.

Ms. McClure listed the following as items that the subcommittee agreed warrant further discussion:

- Single-member versus dual-member House districts—Constitution now allows for either, do we want to continue this;
- Discussion of whether the phrase "as nearly as is practicable" should be eliminated in the following sentence: "Legislative districts shall consist of compact, contiguous territory and shall have population as nearly equal as is practicable, based on the last preceding federal census"; and
- The method of redistricting—whether the state should redistrict in a similar manner to Montana where a commission redistricts rather than the Legislature.

Ms. McClure said that the subcommittee agreed that it should meet again before the commission's next meeting.

Chair Miller directed commission members to provide the subcommittee with suggestions by November 1. The suggestions can be routed through staff for distribution.

Chair Miller announced that he was appointing Mr. Hutmacher to join the Subcommittee on Legislative Reapportionment.

### **Review of Statutes Regarding the Legislature**

**MS. MC CLURE BIBBY MOVED, SECONDED BY MR. OLINGER, THAT THE PERCENTAGE OF THE QUALIFIED ELECTORS OF THE STATE THAT SHALL BE REQUIRED TO INVOKE EITHER THE INITIATIVE OR THE REFERENDUM BE INCREASED FROM FIVE PERCENT TO TEN PERCENT IN SDCL 2-1-1.**

Mr. Hutmacher said that increasing the percentage may be premature.

Mr. Olinger questioned the definition of "electors"—does it mean registered voter?

After discussion by the commission, the motion was withdrawn by Ms. McClure Bibby with the consent of Mr. Olinger, the person who seconded the motion.

Mr. Olinger commented that sponsors of an initiative should be able to withdraw an initiative like an initiated constitutional amendment can be withdrawn.

Staff was directed to draft legislation which would allow withdrawal of an initiated measure.

Mr. Lebrun said that the Legislature should provide by statute that the Legislature does not have the authority to refer a legislative measure to the people. He commented that it was currently unclear whether the Legislature had the authority to refer its own acts directly to the people. Mr. Lebrun felt that the Legislature should not delegate its responsibility to the people. He felt this resulted in the Legislature dodging its responsibility.

There was commission discussion as to whether this should be done in statute or needed to be in the constitution.

Mr. Roe said that he thought that the commission's directive was to expand the powers of the Legislature and that this would be restricting the power of the Legislature.

There was commission discussion as to whether this should be done in statute or needed to be done in the Constitution.

**MR. LEBRUN MOVED, SECONDED BY DR. DAHLIN, THAT THE STAFF DRAFT AN AMENDMENT TO THE CONSTITUTION THAT WOULD PROHIBIT THE LEGISLATURE FROM REFERRING AN ACT OF THE LEGISLATURE DIRECTLY TO THE PEOPLE. The motion failed on a show of hands.**

Mr. Olinger felt that a qualified elector is broader than anyone registered to vote but includes anyone eligible to vote whether registered or not.

**MR. OLINGER MOVED, SECONDED BY MR. BARNETT, THAT THE COMMISSION DIRECT STAFF TO RESEARCH THE DEFINITION OF "ELECTOR," INCLUDING RESEARCH OF**

**CONSTITUTIONAL INTENT, AND REPORT THE FINDINGS TO THE COMMISSION, AND TO DRAFT LEGISLATION WHICH BASED THE SIGNATURE REQUIREMENTS FOR INITIATED MEASURES AND INITIATED CONSTITUTIONAL MEASURES ON ELECTORS NOT VOTES FOR GOVERNOR. The motion prevailed on a voice vote.**

**MR. WILBUR MOVED, SECONDED BY MR. BARNETT, THAT STAFF DRAFT LANGUAGE TO AMEND SDCL 2-1-10 TO REQUIRE THAT PEOPLE INITIATING A PETITION MUST BE RESIDENTS OF THE STATE OF SOUTH DAKOTA.**

Mr. Hutmacher suggested that the draft include language to require that a person also must be of an age to vote.

**Mr. Wilbur and Mr. Barnett agreed to include "and must be registered to vote in South Dakota" in their original motion.**

**The motion prevailed on a voice vote.**

Mr. Olinger stated that he has problems with the way SDCL 2-1-11—Petitions liberally construed—is written.

Ms. McClure Bibby suggested that the commission wait until further reports from the Subcommittee on Legislative Reapportionment before discussing Chapter 2-2—Legislative Districts.

Regarding SDCL 2-4-2, Mr. Ortbahn distributed copies of "Legislator Compensation 2005" from NCSL (**Document #13**), which shows how South Dakota compares with other states.

**MR. BARNETT MOVED, SECONDED BY DR. DAHLIN, THAT THE COMMISSION RECOMMEND TO THE LEGISLATURE LEGISLATION THAT WOULD SUBSTANTIALLY INCREASE LEGISLATIVE PAY.**

Dr. Dahlin suggested that maybe there needs to be an independent group that makes a recommendation to the Legislature regarding legislative salaries.

Mr. Hutmacher said that pay is an issue for some people who would like to run for legislative office.

**MR. BARNETT AMENDED HIS MOTION, WITH THE APPROVAL OF THE SECOND (DR. DAHLIN) THAT THE LEGISLATURE DOUBLE THEIR SALARY EFFECTIVE FOLLOWING THE NEXT GENERAL ELECTION. The amended motion prevailed on a voice vote.**

**DR. DAHLIN MOVED, SECONDED BY MR. OLINGER, THAT STAFF RESEARCH ALTERNATIVE WAYS TO GET INDEPENDENT ADVICE TO THE LEGISLATURE REGARDING LEGISLATIVE SALARIES THAT WOULD BE ONGOING AND REPORT BACK TO THE COMMISSION AT ITS NEXT MEETING. The motion prevailed on a voice vote.**

Dr. Burns recommended that SDCL 2-4-2 should be worded "every year" instead of "every regular legislation session". The commission concurred in the change.

**MR. WILBUR MOVED, SECONDED BY DR. DAHLIN, THAT THE COMMISSION RECOMMEND TO THE LEGISLATURE THAT THE PER DIEM FOR THE LIEUTENANT GOVERNOR BE ADJUSTED. The motion prevailed on a voice vote.**

**NOTE: LIEUTENANT GOVERNOR DAUGAARD ABSTAINED FROM VOTING ON THIS MOTION.**

In discussing 2-6-5, Mr. Olinger commented that it looks like the Legislature had the inherent power of subpoena and does not need to be changed.

In discussing chapter 2-7, Mr. Lebrun said that he would like to have more documentation on legislative intent. He said that a lot of states include a legislative history and would encourage the South Dakota Legislature also to have some type of documentation of legislative history.

Mr. Barnett said that the Legislature actually gets a benefit of the doubt in some instances since it does not have all its intent and history documented. He said that the Attorney General's Office could have trouble defending legislative action if there were extensive documentation of legislative intent.

**MR. LEBRUN MOVED, SECONDED BY MR. OLINGER, THAT THE CHAIR APPOINT A SUBCOMMITTEE TO LOOK INTO PROPOSING LEGISLATION TO PROVIDE FOR LEGISLATIVE INTENT IN SOME MANNER THAT WOULD BE AVAILABLE TO THE PUBLIC AND THE COURTS. The motion failed on a show of hands.**

In discussing SDCL 2-9-1.1—Annual report of council on judicial opinions—Mr. Ortbahn said that the Executive Board of the LRC receives an annual report from its Subcommittee on Judicial Opinions.

Mr. Holwegner commented that in other states the leaders of each house had more input in the administrative affairs of the Legislature throughout the year not just during the legislative session. This does not happen in this state.

Regarding SDCL 2-9-3—Officers of board—**MS. MC CLURE BIBBY MOVED, SECONDED BY MR. LEBRUN, THAT STAFF BE DIRECTED TO DRAFT A PROPOSAL TO INCLUDE LEGISLATIVE LEADERSHIP (MAJORITY AND MINORITY PARTY LEADERS) AS MEMBERS OF THE LRC EXECUTIVE BOARD.**

Mr. Hutmacher expressed hesitance about the commission getting involved in this type of legislative procedure. He felt that the current system gets more legislators involved in the functions of the Legislature. He commented that the Legislature should change this on its own if it want to.

Mr. McClure Bibby said that term limits have changed the dynamics of the Legislature and that the continuity is not there any more and this might help.



**The motion prevailed on a voice vote.**

As a member of the Uniform Laws Commission, Mr. Lebrun said the commission works pretty well and that he does not see a need for changes to Chapter 2-11—Commission on Uniform Legislation.

The commission agreed.

Regarding SDCL 2-12-6—Lobbyists, Mr. Roe asked what is wrong with hiring a lobbyist on a contingency basis since the world is full of cases where a person is paid based on the end result without any issue of ethics.

Mr. Olinger thought it would be a step back ethically to allow payment of lobbyists on a contingency basis.

Mr. Barnett said that this provision is needed to set a higher standard because tax dollars are involved.

Mr. Bezpaletz said that the language in SDCL 2-12-6 is pretty standard nationally.

Mr. Roe expressed his thought that the commission should consider the repeal of SDCL 2-12-10—Restrictions on activities of state and federal agents and employees.

**MR. BARNETT MOVED, SECONDED BY MR. ROE THAT STAFF RESEARCH THE HISTORY BEHIND SDCL 2-12-10 AND REPORT TO THE COMMISSION. The motion prevailed on a voice vote.**

Regarding Chapter 2-13—Publication and distribution of acts and session laws, Mr. Lebrun felt that many government documents are in the public domain and that the government does not hold the copyright to the laws.

Mr. Ortbahn commented this chapter could be looked at for clean-up.

The Chair commented that this is a chapter the Legislative Research Council could review and make recommendations to the Legislature and the commission does not need to get involved.

The commission briefly discussed SDCL 2-14-16—Effective date of legislative acts—and agreed that no changes need to be made.

The commission agreed that no changes need to be made to Chapter 2-15—Conventions for amendment of United States Constitution.

The commission agreed that the Code Commission could deal with any need for change to Chapter 2-16—Codes and compilation.

Mr. Lebrun commented that he probably misspoke when he made his motion regarding legislative intent—what he really meant was legislative history. He would like the commission to further consider this and will bring examples of what other states do in this regard to the next meeting.

### **Other Staff Directives**

In response to commission requests, Mr. Bezpaletz distributed copies of South Dakota Legislative Research Council Issue Memorandum 96-11 titled The Legislative Day: Time as a Parliamentary Concept (**Document #14**) and the Interpretation of the South Dakota Supreme Court in the Matter of interpretation of SDCL 1-15-1 and 1-5-2 and Constitution Article IV, Section 4 (**Document #15**).

The commission agreed to direct staff to compile its directives and changes into a draft resolution for the commission's consideration at its next meeting.

Mr. Ortbahn said that the commission would make its report to the Executive Board, and the Board would have to decide on how any legislation recommended by the commission would be introduced.

Ms. McClure Bibby and Dr. Dahlin agreed that the subcommittees would meet once by teleconference prior to the commission's next meeting on November 16 and 17, 2005, and also meet in the morning November 16 prior to the full commission meeting.

### **Adjournment**

There being no further business, Chair Miller adjourned the meeting at 11:22 a.m.



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